

from the buffer, at a retrieval rate. In contrast, the cited element of Itakura, time stamp take out circuit 11, does not retrieve time restricted data from buffer 41. Instead, time stamp take out circuit 11 extracts “time information (for example, a time stamp PCR) contained in the transmission data”. Itakura at col. 4, ll. 3-4. In other words, rather than retrieving the time restricted data from the buffer, Itakura’s time stamp take out circuit 11 retrieves only timing information from such time restricted data.

Moreover, the combination of Itakura and Rusu (US 6,141,323) suggested in the Office Action does not yield the present invention. The Office Action suggests that obtaining queue length information in the programmable fashion taught by Rusu in the system described by Itakura will somehow yield the present invention. In Itakura’s scheme, the buffer level is “monitored” using a counter 43 that is updated each time a new packet is added or a stored packet is read out of the buffer. Itakura at col. 4, ll. 26 - 28. Therefore the “monitoring rate” is actually some blend of the “retrieval rate” and the rate at which new packets arrive into the buffer. The “controller” 55 cannot set this rate inasmuch as the controller 55 cannot determine when new packets will arrive at the buffer. It is solely concerned with determining when the packets will be read out of the buffer. Therefore, even if the controller’s actions were made programmable as described by Rusu, it would only be the read out rate that becomes programmable. The rate at which new packets arrive into the buffer would still be outside the control of the controller.

Thus, Itakura fails to teach features of the invention recited in claim 1 and even the combination of Itakura and Rusu would not yield this invention. For at least these reasons then, claim 1 and its dependent claims are patentable over these references. Note that claims 18-20 were rejected in light of the combination of Itakura and Ruso when considered in view of certain conventional means described in the specification. However, those conventional means do not addresss the deficiencies of the references discussed above and, so, claims 18-20 remain patentable over the combinations of art relied upon in the Office Action.

With respect to claim 17, the same rationale applies. This claim, like claim 1, recites a retriever for retrieving time restricted data from a buffer. As indicated above, such a retriever is not found in the system described by Itakura. Moreover, claim 17 recites a controller for setting a monitoring rate and, as discussed above, the combination of Itakura and Rusu would not

include such a controller because, at most, only the read out rate (and not the monitoring rate) would end up being controlled. Consequently, claim 17 is patentable over the references.

Finally, with respect to claim 59, the combination of the references would not yield a step of setting a time interval between sequential retrievals of time restricted data from a buffer and a monitoring time at which the buffer level of said time restricted data in said buffer is to be monitored. As discussed above, the combination of the references would still only provide a programmable means for setting the read out rate and not the monitoring rate, which would depend on the uncontrolled (and hence unknown) time at which packets arrive into the buffer. Hence, there would be no facility for setting the claimed time interval because at least one of the defining parameters thereof (the monitoring rate) would remain uncontrolled. For at least this reason, claim 59 and its dependent claims are patentable over the cited references.

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Respectfully submitted,

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